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No. 1041

In the Supreme Court of the United States

OCTOBER TERM, 1946

L. C. PRICHARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the circuit court of appeals (R. 103–104) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered December 19, 1946 (R. 104), and a petition for rehearing (R. 105–106) was denied January 22, 1947 (R. 107). The petition for a writ of certiorari was filed February 18, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED

The only question presented is whether the evidence is sufficient to sustain petitioner's conviction.

STATEMENT

On November 6, 1944, an indictment in one count was returned in the District Court for the Northern District of Georgia, charging that petitioner and Ernest Pruitt, Billie Bell, Richard Cole, Derrell Rogers and Corbett Wilson Prichard conspired to defraud the United States and to commit certain offenses against the internal revenue laws relating to the manufacture, transportation, possession, sale, and distribution of distilled spirits (R. 2–6). This charge related to the operation of certain illicit stills in Haralson and Douglas Counties, Georgia. The evidence as to these activities, particularly insofar as it shows petitioner's complicity, is set forth in the Argument, *infra*.

After a jury trial, petitioner and Pruitt were found guilty (R. 7, 92), and petitioner was sentenced to imprisonment for 18 months (R. 8–9, 92).[1] On a joint appeal to the Circuit Court of Appeals for the Fifth Circuit (R. 94–95), the convictions of petitioner and Pruitt were affirmed (R. 103–104).

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[1] Pruitt was sentenced to imprisonment for 15 months (R. 9–10, 92). Bell, Cole and Corbett Wilson Prichard stood trial with petitioner and Pruitt (R. 10). The court granted Corbett Wilson Prichard's motion for a judgment of acquittal

ARGUMENT

Petitioner contends that the evidence against him is as consistent with innocence as with guilt, and that, therefore, the district court erred in refusing to grant his motion for a judgment of acquittal (Pet. 3–9). That contention, however, is not supported by the record.

The relevant circumstances establishing petitioner's participation in the conspiracy are briefly as follows:

In 1943 and 1944, petitioner employed Pruitt, who lived about 3½ miles away, to farm some of his land (R. 79–80). On September 30, 1943, state and federal officers raided an illicit distillery in operation in Haralson County, Georgia. The officers arrived in the vicinity of the still about 5 o'clock in the morning and observed the apparatus being set up for operation and saw smoke coming from the still. While observing these activities, the officers heard the two men operating the still tell a third person that they had not had any breakfast and needed something to eat, and that they also needed some smoking tobacco. This third person then left the site of the still. Shortly thereafter, the officers seized the still and arrested Cole and Pruitt. One of the officers was

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at the close of the Government's case (R. 75–76). Although the transcript of the verdict included in the record (p. 7; see also p. 92) refers only to petitioner and Pruitt, petitioner states (Pet. 3) that all the defendants on trial except Corbett Wilson Prichard were found guilty.

then stationed on a nearby road to intercept any automobiles coming toward the still. About 20 or 25 minutes later, this officer stopped a car driven by petitioner at a point about 50 yards from the still. Petitioner was alone, and in the car the officer found canned goods, a loaf of bread and smoking tobacco. Petitioner was then taken by this officer to the scene of the still, and shortly thereafter he told Cole and Pruitt that he would see about making their bonds. (R. 44–49, 53–57.) In looking over the apparatus, the officers observed that the cracks between the planks in the sides of the tub were chinked with cotton (R. 57, 60–61, 67). They found a cotton ticket stub in the furnace of the still (R. 60, 63), which was traced to a local cotton warehouse. An employee of the warehouse testified that the stub related to a sale of 40 ounces of cotton he had made to petitioner on or about September 21, 1943 (R. 70–72). The officers also testified that they had seen a number of jugs and cases in petitioner's barn (R. 61, 69).

About noon on Sunday, October 17, 1943, state and federal officers raided another illicit distillery near the home of the defendant Bell in Douglas County, Georgia, and at that time they arrested Bell, Cole and Pruitt (R. 27–29). There was evidence that a cow belonging to a nearby farmer had died on or about October 9, 1943, and that Bell had inquired of the farmer whether he be-

lieved the cow had been poisoned from drinking mash at the still. About 9:40 a. m. on October 11, 1943, Pruitt went to the farmer and paid him $65 in currency, which had been agreed upon as compensation for the dead cow. (R. 33–37). The president of the only bank in Villa Rica, Georgia, a town near the sites of the illicit stills, testified that he did not recall that Pruitt had an account at the bank, but that petitioner did and that on October 11, 1943, a check for $65 was charged against his account (R. 40–41). A few months after the seizure of the Douglas County still, petitioner, who was previously unknown to the farmer, approached him and inquired about the loss of the cow and how it had happened (R. 37–39).

This evidence was amply sufficient to warrant the trial judge in submitting petitioner's case to the jury, for it showed that petitioner was a principal conspirator in the operation of the stills, if, indeed, he was not the dominant figure. It was fairly inferable from the officers' testimony that petitioner was the third person present at the Haralson County still when they had it under surveillance, and the further evidence as to the purchase of cotton used in the apparatus and petitioner's undertaking to secure bonds for Cole and Pruitt showed that he had an interest in that still. The evidence concerning payment for the dead cow definitely linked petitioner with the Douglas County still.

Petitioner claims, however, that Pruitt's testimony refuted the circumstantial case against him (Pet. 3, 4, 7–8). While Pruitt testified that he and one Rube Reeves, who he said had died prior to the trial (R. 81), controlled the stills and that petitioner had no connection with them (e. g., R. 76–78), the jury apparently chose not to believe Pruitt. That the jury was justified in rejecting his effort to exculpate petitioner is shown by the character of Pruitt's testimony. Thus, he testified that he had paid for the dead cow with money borrowed from Reeves (R. 77). Reeves was dead so that his story could not be checked. However, the testimony of the banker concerning the withdrawal from petitioner's account on the same day that Pruitt paid the farmer indicates that petitioner and not Reeves furnished the money. Pruitt also testified that petitioner did not sign any bond for him in the Haralson County matter (R. 84), but this was shown to be false, for a certified copy of Pruitt's bond introduced in evidence bore petitioner's signature as surety (R. 91).[2] Additionally, on cross-examination, Pruitt was unable to explain various details regarding the management of the stills with which, as the alleged controlling person, he should have been familiar. For example, he testified that he could

[2] This effective impeachment of Pruitt, of course, destroys petitioner's assertion that "no attempt was made to impeach Pruitt" (Pet. 4).

not remember what he had paid the other men working at the still (R. 78, 79), or where he had obtained certain equipment for the stills (R. 79).

The probative sufficiency of the testimony was a matter for the jury's determination (see, e. g., *Glasser* v. *United States*, 315 U. S. 60, 80), and the concurrence of both courts below in the sufficiency of the jury's verdict renders unnecessary any further review by this Court. See *United States* v. *Johnson*, 319 U. S. 503, 518.

CONCLUSION

The judgment below is clearly correct. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

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